

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

CALAIS LNG PROJECT CO., LLC and	)	APPLICATIONS FOR AIR EMISSION,
CALAIS LNG PIPELINE CO., LLC	)	SITE LOCATION OF DEVELOPMENT,
Calais, Baring Plantation	)	NATURAL RESOURCES PROTECTION
Baileyville, Princeton	)	ACT, WASTE DISCHARGE, and
Washington County, Maine	)	WATER QUALITY CERTIFICATION
#A-1029-71-A-N	)	
#L-24843-26-A-N	)	
#L-24843-TG-B-N	)	MOTION TO STRIKE
#L-24843-IW-C-N	)	
#L-24843-L6-D-N	)	
#L-24843-4P-E-N	)	
#W-9056-5O-A-N	)	

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For the reasons set forth below and pursuant to the Fourth Procedural Order, Save Passamaquoddy Bay–U.S. and NN move to strike certain testimony filed by the parties. I am authorized to state that CLF and Sierra Club join in this motion

**I. Introduction and Standard of Review**

Pursuant to Chapter 30(10)(A) of the Department’s rules, “[e]vidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs shall be admissible.” Irrelevant and immaterial evidence shall be excluded. *Id*; *see also* 5 M.R.S.A. § 9507(2) (“MAPA”) (“Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.”). Furthermore, as a general matter, a fact witness must testify from personal knowledge in order for his or her testimony to be relevant and material. The testimony of an expert witness must be based on the expert’s qualification in the discipline pertinent to the offered expert opinion. The degree of a witness’ expertise or qualification goes to the weight of that expert’s opinion. The Second Procedural Order also rules that the credentials of an expert witness must accompany the testimony. Second Procedural Order at 7 (Apr. 30, 2010).

This Motion to Strike is informed not only by these standards but also by the Board Chair's statement in the Second Procedural Order Amendment that the "Board must base its decision on the licensing criteria and parties are urged to focus their testimony on evidence pertaining to whether the proposed project meets the licensing criteria," as well as the Board Chair's stated goals to focus scarce hearing time on contested issues that are directly related to the licensing criteria. *Id.* at 5.

Finally, this Motion is informed by the Board's ruling (on appeal from the Chair's Order) that:

The Board's consideration of cumulative impact is limited to an assessment of the impacts of the proposed project together with the existing development in the area. The Board cannot speculate about the potential impacts of other similar projects that are not yet approved or constructed.

Second Procedural Order Amendment §4(D) (May 6, 2010).<sup>1</sup> Much of the testimony sought to be struck, particularly that of the Business Intervenors, involves such speculative cumulative impacts. For example, Business Intervenor witnesses claim that Calais LNG will result in lower electricity prices when it is unknown where the gas from Calais LNG would be sold, whether it would be sold to a power generator, much less a generator serving Maine. Such testimony is unfounded speculation on a scale far more significant than the impacts of competing applicant Downeast LNG. Likewise, such testimony is far more speculative than the recognized need to expand the M&NE pipeline to accommodate Calais LNG. *See id.* at § N (holding that M&NE expansion is speculative because it has not yet been approved). Consistency requires that such testimony be struck.

As discussed below, all or portions of particular witnesses' direct testimony and associated exhibits filed by the Business Intervenors, the City of Calais, and Concerned Citizens/Professional Mariners fail to meet the standards set by DEP Chapter 30, MAPA and/or the Procedural Orders.

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<sup>1</sup> SPB/NN continue to maintain that the Board incorrectly views cumulative impacts and do not waive any of its arguments by means of this motion.

## **II. Business Intervenors**

First, it must be noted that none of the prefiled presented by the Business Intervenors relates to impacts to the coastal wetland, Maine waters, or land serving as the pipeline route. Particular witness testimony is addressed below.

### **A. Dana Connors**

Mr. Connors has no demonstrated expertise or personal knowledge in the areas of the energy or environmental impacts of an industrial LNG project. Mr. Connors is the president of the Maine State Chamber of Commerce, “the voice of Maine business” and a lobbyist. His testimony does not qualify him as an expert, nor are his credentials included as required by the Second Procedural Order at 7 (Apr. 30, 2010). However, Mr. Connors’ testimony addresses several expert disciplines including energy needs and forecasting, environmental impacts, economics, Washington County’s economic development, unemployment and its impacts, and the future energy economics and pricing resulting from the project. He is not qualified to offer expert opinion on such a broad range of topics, or any of them individually. Nor does he claim personal knowledge.

Further, Mr. Connors’ testimony as to the price of energy is not relevant to the Board’s consideration of this project because it is speculative whether this project will be generating or selling power to Maine businesses. The Application’s stated project purpose is to “provide greater access to clean and affordable energy supplies and increased reliability to the consumers of Maine and New England” (NRPA application at 2), and is intended to “help meet both baseload demand growth and pressing peak needs for natural gas in New England.” *Id.* at 3. Or, as stated in the Alternative Analysis of the NRPA application, the Project is intended to meet “the demand for natural gas in New England.” Indeed, Mr. Connors engages in rampant speculation – contrary to the Board’s Order – regarding cumulative impacts. There is no power plant in Maine to process gas from Calais LNG. Mr. Connors’ testimony assumes that a power plant will be built as a result of the project, the power plant will serve Maine, and energy prices will fall as a result, which is pure speculation. It is certainly far more speculative than evidence or testimony concerning Downeast LNG’s intention to file state applications in June, but the Board has ruled it would not consider such impending state applications in analyzing cumulative

impacts of the Calais LNG terminal. In short, there are no facts in any testimony to support Mr. Connors' speculation; rather, as stated above, the facts contradict such speculation.

**B. John Rohman**

Mr. Rohman is testifying as an engineer who is "aware of the impact of energy use to any new construction or major renovation" and who believes Calais LNG would benefit Maine businesses. As noted above, this project is not an energy generation project – it is a project whose sole purpose is to import and store LNG and then regasify the LNG and transport it to markets in New England. Any claim that Maine businesses would benefit from energy imported by Calais LNG is highly speculative and would not pass the Board's test as to what may be considered a cumulative impact. Further, while Mr. Rohman is a member of the Efficiency Maine Trust Board, he is specifically not testifying in that capacity nor is he being offered as an expert, as no evidence of any expertise was submitted in connection with his testimony. Mr. Rohman's testimony concerning the impact of the project on Maine's energy consumers, the broad impacts of an LNG facility or how LNG fits into carbon emissions reduction efforts are not based on personal knowledge as an engineer. Mr. Rohman does not even identify the specific parties he references as clients and testifies as to their needs or desires. Mr. Rohman's testimony should be struck in its entirety as irrelevant, speculative, not related to the criteria the Board will be considering in this matter, and not based on personal knowledge.

**C. Keith Van Scotter**

Mr. Van Scotter's testimony at pages 1-5 is not relevant to this project or the criteria that the Board must consider and should be stricken. Further, pages 6-7 are entirely speculative. He provides no facts to back his claim that LNG import and storage facilities in Maine could prevent closure of an unnamed "mill like Lincoln," prevent "hundreds of Maine breadwinners" from being out of work, or that CLNG would in any way lower Maine energy costs. Nor is Mr. Van Scotter qualified to opine on CLNG's environmental impacts, such as at page 7. His testimony should be struck in its entirety.

**D. Bill Brown and Ray McMullin**

It is unclear as to why this is joint testimony. Mr. McMullin and Mr. Brown's businesses have no stated or obvious connection other than both working for large companies in Maine. Beyond that, neither is apparently offered as an expert and neither has any demonstrated experience with a project such as this one. That lack of experience is exhibited by statements

such as “Delivery of LNG by ship is the only method for supplementing the existing natural gas on this continent, and New England in particular,” (p.7) when in fact there are both domestic and international supplies of natural gas presently available. Nor do they provide any personal knowledge, evidence, or foundation whatsoever to support statements such as “the effect of one large Maine LNG facility is calculated to be a lowering of electric rates by up to \$100 million per year.”

Mr. Brown and Mr. McMullin’s claim that “increased liquefied natural gas storage and import capacity in Maine will benefit all Maine energy consumers . . . will greatly reduce electricity and natural gas prices [in Maine] . . . [and] will bring significant benefits to Maine business and consumers” (p. 6) is not backed by any facts and is speculative and impermissible evidence of cumulative impacts for the reasons stated above.

Likewise, neither is qualified to opine on energy forecasting or CLNG’s impacts. Mr. Brown’s and Mr. McMullin’s testimony should be struck in their entirety.

**E. Michael Aube**

Mr. Aube’s testimony is intended to “provide the [Board] with an overview of the economic, community, human and environmental conditions in Washington and in Calais.” (p.2) Whether that testimony is relevant to this project is questionable. But what is not questionable is that the final portion of Mr. Aube’s testimony at page 4 concerning the environmental benefits of the project is without any support beyond unspecified “relevant research” which is neither cited in, nor included with the testimony. At a minimum, that section of Mr. Aube’s testimony should be struck.

**F. Linda Pagels-Wentworth and Phil Polk**

Baileyville Town Manager Ms. Pagels-Wentworth, and Mr. Polk, a citizen of Washington County, both provide heartfelt testimony on the need for good jobs in Washington County but their testimony on the project’s potential to “bring LNG to Domtar” (Pagels-Wentworth at 3) or how “[n]atural gas could help the Baileyville [Domtar] mill stay competitive,” (Polk at 2) is clearly inadmissible. Neither is an official speaking on behalf of Domtar and neither provides evidence to support their statements, which are at best speculation. No facts or personal knowledge are provided in support of their speculative conclusions or opinions. This type of speculation and cumulative impacts testimony is not allowed.

Further, Ms. Pagels-Wentworth discusses the need for LNG as a transition fuel and both she and Mr. Polk discuss CLNG's environmental impact, but provide no facts indicating personal knowledge or expertise on either issue. Their testimony should both be stricken.

**G. Calvin Murphy**

Mr. Murphy's testimony provides a heartfelt "idea of the frustration of the people of Calais and Washington County who must leave friends and family behind to secure employment." (p. 1.) However, Mr. Murphy's testimony is not relevant to the criteria that the Board must consider in this matter and should be struck in its entirety.

**H. Paul Mercer**

Mr. Mercer's testimony is entirely generic and not at all tied to the Calais LNG project or its impacts – only very brief generalities applicable to any LNG facility are discussed. Indeed, the purpose of Mr. Mercer's testimony is unclear and the attached exhibits are totally unconnected to his testimony. Mr. Mercer's testimony references only one exhibit, a picture of the Everett LNG facility and an attached line drawing, but neither is attached. Instead exhibits 12-14 attached to his testimony appear to be of a natural gas storage facility in Lewiston and exhibit 15 is a copy of a power point presentation whose presenter apparently is not Mr. Mercer and is believed to be from an LNG industry website. Mr. Mercer's testimony should be struck because it is not relevant either to the project or impacts to the coastal wetland.

**III. City of Calais**

**A. Joseph Cassidy**

Mr. Cassidy's testimony should be struck in its entirety. Mr. Cassidy discusses "the positive impacts that [Calais LNG] will have on our community and the people of Calais and Washington County." Mr. Cassidy's area of teaching as a college instructor is not mentioned and no credentials are included with his testimony. Therefore, his testimony should be based on personal knowledge. Mr. Cassidy characterizes the alleged change in the local economy and then claims that Calais LNG will positively impact the problems he describes. His testimony lacks foundation, is wholly speculative, and is also cumulative impacts discussion not allowed by the Board Order. Specifically, Mr. Cassidy suggests that the jobs associated with the project will "provide long-term economic growth and stability" and give rise to "other businesses [that] will grow up around the facility providing further jobs and opportunities." Mr. Cassidy goes even

further to suggest that Calais LNG will bring people off public assistance and lead to “improvements across the board in the health of our families and local towns.” Mr. Cassidy is not qualified to make such statements and such speculation regarding CLNG’s cumulative economic and sociological impacts is not allowed in this proceeding. They are also not relevant to any licensing criterion in this matter.

#### **IV. Concerned Citizens/Professional Mariners**

##### **A. Kenneth Thomas**

Mr. Thomas’s prefiled testimony should be struck because he opines on the tourist trade, but he neither works in the tourist trade, nor is he qualified as an expert in the tourist trade. In fact, Mr. Thomas candidly states that, “we are not really a tourist destination. Most of our business has historically been due to the bridge at Calais, which is one of the 10 busiest border crossings into Canada.” Thomas Prefiled at 2, CC/PM Bates Stamp 24. Further, there is no CV attached and his testimony does not qualify him as an expert in the tourist trade. He simply conveys his lay opinions, but here is no foundation or qualification for his opinions.

##### **B. Gerald Morrison**

The section entitled “Design of LNG Ships” on Pages 6-7 Bates Stamp CC/PM 53-54 and Exhibit 12 should be struck to the extent they discuss safety and security of tankers. Section 4(I) of the Second Procedural Order (Apr. 30, 2010) provides that the Board will not hear evidence on this issue: “The safety of LNG facilities and tankers is regulated by the Federal Energy Regulatory Commission; the Board does not have jurisdiction on this issue.”

Indeed, members of Intervenors SPB-US and NN also have important safety concerns but did not include their concerns – or any expert evidence addressing their concerns – in their testimony because of this Order. CC/PM should be held to that same standard; otherwise, other Intervenors should be allowed the opportunity to provide testimony on this issue.

The Board has already ruled upon the admissibility of Exhibit CC/PM -12 of Mr. Morrison’s testimony – in the Downeast LNG proceeding (then-Exhibit 6). SPB-US and NN request that the Board impose the same ruling in this proceeding for the same reasoning that applied then. The Board’s Fourth Procedural Order, dated July 2, 2007, is attached to this motion for the convenience of the Board. *See* Order at 4-6. Likewise, also in the Downeast LNG proceeding, the Board ruled on Mr. Morrison’s Exhibits 9.1 through 9.12. *See* Order at 4

regarding then-Exhibit 3. To the extent those Exhibits are not newspaper articles, they are still not relevant to the issues before the Board. Whether Mr. Morrison can repair a barge or crane, or his ownership of a metal fabrication facility, is not relevant to his qualifications as a pilot.

**C. James Matthews**

See above to the extent that Exhibits are shared between Mr. Morrison and Mr. Matthews.

**D. Douglas Lord**

Mr. Lord adopts Mr. Morrison's testimony and exhibits and Mr. Lord's testimony should be struck to the same extent that Mr. Morrison's is struck and otherwise limited to navigational risks, environmental impacts, and the effects of a spill as allowed by the Second Procedural Order.

**E. Christopher Gardner**

Mr. Gardner states that "the waterways and passages are all safe . . . ." Gardner Testimony at 2, CC/PM Bates Stamp 154. This statement should be struck for the reasons stated above regarding Gerald Morrison and Douglas Lord, or limited to navigational risks, environmental impacts, and the effects of a spill as allowed by the Second Procedural Order.

**F. Yvon Labbe/Tony Brinkley**

The testimony of Yvon Labbe and Tony Brinkley should be struck because, while they may be experts on Maine's Franco-America heritage, they are not experts on erosion, LNG, tug-assisted LNG tanker transits, aesthetics, and other present-day physical threats to St. Croix International Monument. No foundation is laid for any expert testimony on these topics. They only discuss St. Croix Island's history. Nor do Mr. Labbe and Mr. Brinkley base their testimony on personal knowledge. Their testimony should be struck.

**V. Conclusion.**

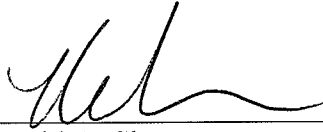
The Board of Environmental Protection should strike the testimony and associated exhibits identified above and for the reasons set forth above.



June 9, 2010

Save Passamaquoddy Bay-U.S.  
*Nulankeyutmonen Nkihtahkomikumon*

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